IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1053 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEIR AND L.R. OF DECD DHANJIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1053 of 2002

MR AJ PATEL for Petitioner No. 1

MR KAMAL B TRIVEDI, ADDL. ADVOCATE GENERAL WITH

MR SP SEN, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 01/04/2002

ORAL JUDGEMENT

This petition challenges the rejection of the petitioner's application for grant of wada land. The policy for allotment of wada land has already been interpreted by this Court in the judgment rendered today in Special Civil application No. 1052 of 2002.

2. Mr AJ Patel, learned counsel for the petitioners has submitted that the impugned order dated 12.12.2001 passed by the Collector is based on an ex-parte inquiry which was held behind the petitioner's back. The petitioner was not given any opportunity of being heard at the time of inspection or before passing the impugned order.

3. Entry 86 in the schedule to the impugned order (Annexure "I") indicates that the land in question admeasures 746.09 sq. yards for which the petitioners had deposited Rs.9,699-20 i.e. at the rate of Rs. 15/per sq.mtr. The entry further indicates that the authorized holders were Mangalbhai Dhanabhai, Ambaram Sankalchand and Gomatiben, daughter of Mohanlal Ramdas, but the persons found to be occupying the land were Jayantibhai Surabhai, Govindbhai Surabhai and Atmaram Surabhai and that the land was used for residence. These particulars support the case of the respondent-authorities that the petitioners are not using the land and had permitted the others to use the land and that the land is not being used for the purpose of storing agricultural implements and keeping the cattle.

4. The learned counsel for the petitioner thereupon submits that if the petitioners were given an opportunity of hearing, the petitioners would have pointed out all the relevant facts including the fact that the land was being used for storing the agricultural implements.

5. However, inspite of knowing full well what had weighed with the authorities in not granting the land, the petitioners have not come out with any specific case that the land in question was being used for storing agricultural implements or for keeping cattle. Even any evidence about holding of agricultural lands by the petitioners is not produced on record.

In this set of circumstances, the authorities are justified in invoking the settled legal principle that lack of an opportunity of hearing is of no consequence when the order which is sought to be challenged would not have any different even after hearing (vide Aligarh Muslim University Vs. Mansoor Ali Khan, (2000) 7 SCC 529 and Mahesh T Rabari vs. Director of Primary Education, 2002(1) GLH 438).

6. In view of the above discussion, the petition is dismissed. Rule is discharged with no order as to costs.

(M.S. Shah, J.)

sundar/-